

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MICHAEL McCRAY,

Plaintiff,

v.

9:07-CV-415

**BRIAN SMITH, Correction Sergeant, Greene
Correctional Facility; E. BENDELL,
Correction Officer, Greene Correctional
Facility; DONALD BASEN, Correction Officer,
Greene Correctional Facility; JOSEPH DAVID,
Superintendent, Greene Correctional Facility;
and BRIAN FISCHER, Commissioner,**

Defendants.

APPEARANCES:

OF COUNSEL:

MICHAEL McCRAY
Plaintiff *pro se*

HON. ANDREW M. CUOMO
Attorney General for the
State of New York
The Capitol
Albany, New York 12224-0341
Attorney for Defendants

JUSTIN C. LEVIN, ESQ.
Assistant Attorney General

NORMAN A. MORDUE, CHIEF U. S. DISTRICT JUDGE

ORDER

The above matter comes to me following a Report-Recommendation by Magistrate Judge David R. Homer, duly filed on the 3rd day of August 2009. Following ten days from the service thereof, the Clerk has sent me the file, including any and all objections filed by the parties herein.

After careful review of all of the papers herein, including the Magistrate Judge's Report-

Recommendation, and no objections submitted thereto, it is

ORDERED that:

1. The Report-Recommendation is hereby adopted in its entirety.
2. The defendants' motion for judgment on the pleadings is converted to one for summary judgment (docket no. 42), that motion is granted and judgment is granted to all defendants as to all claims.
3. The Clerk of the Court shall serve a copy of this Order upon all parties and the Magistrate Judge assigned to this case.

IT IS SO ORDERED.

Dated: August 25, 2009
Syracuse, New York


Norman A. Mordue
Chief United States District Court Judge